



KDADS Plan for Assessing Compliance with the CMS Final Rule for Home and Community Based Settings-Serious Emotional Disturbance Program

Posted for Public Comment (May 1, 2015 until May 31, 2015)

Purpose

On March 17, 2014, the Center for Medicare and Medicaid Services (CMS) issued a final rule for home and community based services that require states to review and evaluate Home and Community-Based Services (HCBS) Settings, including residential and nonresidential settings. States are required to ensure all HCBS Settings comply with the new requirements, and analyze all setting where HCBS participants receive services to determine if current settings comply with the Final Rule. KDADS has created a Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule. The federal regulation for the new rule in 42 CFR 441.301(c)(4)-(5), and more information on the rules can be found on the CMS website at www.medicaid.gov/hcbs.

Overview

In April, the Kansas Department for Aging and Disability Services (KDADS), Medicaid operating agency, and the Kansas Department of Health and Environment (KDHE), single State Medicaid agency, identified settings that should be reviewed for compliance with the HCBS Final Rule related to home and community based settings. A Summary of HCBS Setting Assessment Requirements is available on the KDADS website at www.kdads.ks.gov.

Over the first six months of the Transition Plan, KDADS will conduct provider assessments and develop a compliance summary from each provider type and identify areas of non-compliance for further review. This assessment will provide the basis for identifying, settings in compliance with the rule, settings requiring heightened scrutiny, and settings no longer qualifying for HCBS. The provider types and licensing structure are available in the KDADS Provider Assessment of HCBS Settings are available on the KDADS website at www.kdads.ks.gov.

Transition Plan

KDADS conducted Public Comments sessions to discuss the Statewide and HCBS-SED specific Transition Plan for compliance with the HCBS Setting Final Rule. KDADS received several comments regarding the Statewide Transition Plan along with comments regarding the HCBS-SED specific Transition Plan. The HCBS-SED Transition Plan was adopted to reflect the same time limitations modified in the Statewide Transition Plan based on public feedback. Public comments were considered regarding the HCBS-SED specific Transition Plan, but no modifications were made to the HCBS-SED specific Transition Plan.

KDADS has developed a statewide transition plan for bringing HCBS provider-owned and provider-controlled settings into compliance with new HCBS settings. We propose CMS approve up to 5 years allowance from the effective date of the regulation to comply with the transition plan for the HCBS-SED Waiver. The plan is as follows:

The new Home and Community Based Services (HCBS) Settings Rule from the Centers for Medicare and Medicaid Services (CMS) applies to all programs that provide HCBS. In Kansas, this rule will apply to all settings where HCBS are provided, HCBS-SED services are typically provided in the consumer's community.

This Transition Plan ensures the HCBS-SED program is in compliance with the new settings requirements and meets the expectations of CMS, prior to submission of the HCBS-SED Transition Plan. The final Transition Plan will incorporate changes relating to the comments and feedback from CMS, which will include the following:

- Summary of all public comments received for the HCBS-SED program relating to the proposed transition plan, including any revisions as a result of the public comments
- Inventory and description of all HCBS-SED settings
- How setting types meet or does not meet the federal HCBS settings requirements

Assessment Plan

- To complete assessments for HCBS Settings
- To identify areas of non-compliance that needs to be addressed
- To identify the number of individuals affected by the HCBS Settings Rule

A Compliance Plan

- To ensure the health and safety of participants who reside in locations that need to meet corrective action requirements for setting to come into compliance during the State's specified transition timeline
- To move individuals to compliant settings, if necessary
- In April, the KDADS, Medicaid operating agency, and KDHE, single State Medicaid agency, identified settings that should be reviewed for compliance with the HCBS Final Rule related to HCBS settings.

Over the first six months of the Transition Plan, KDADS will conduct provider assessments and develop a compliance summary from each provider type and identify areas of non-compliance for further review. This assessment will provide the basis for identifying, settings in compliance with the rule, settings requiring heightened scrutiny, and settings no longer qualifying for HCBS-SED.

KDADS will assess all provider setting types to identify the scope of compliance and measure the impact on individual HCBS-SED participants within 180 days of approval of the Transition Plan. The assessment will identify non-compliant settings and barriers to achieving compliance that require additional time to address. The assessment will also identify settings which are deemed ineligible by the new rule for which relocation of HCBS participants will be required. Kansas will use self-assessments, attestations, policy and record review, participant and provider interviews, observations, and other tools to determine compliance with respect to the new rule.

- Non-residential settings will be reassessed if additional guidance from CMS warrants more information to determine compliance with the new rule. Non-residential settings will be assessed pending CMS additional guidance and within 90 days of approval of the Transition Plan.
- Quality Management Specialists (QMS), Health Facility Surveyors, and MCO Care Coordinators will assist the State in identifying compliance related issues through normally occurring

interactions, and targeted reviews when heightened scrutiny is determined appropriate or when settings are determined likely ineligible for HCBS. Additional protocols will be added to existing quality review materials as part of ongoing compliance and quality assurance upon approval or advisement by CMS.

- HCBS settings results will be provided within 60 days of the date of assessment. Non-compliant settings will be asked to participate in Focus Groups following the completion of statewide assessment period. The Focus Groups will identify areas and reasons of non-compliance and additional guidelines and benchmarks for compliance with the Final Rule to ensure compliance of all HCBS-SED settings. HCBS-SED settings will be required to submit a plan of correction to address any identified areas of non-compliance which will be reviewed and accepted or rejected by the state.

In calendar year 2015, the State will review existing policies, regulations and statutes to identify barriers to compliance or conflicting information that hinders compliance. State law changes will be initiated to ensure compliance with HCBS Settings Rule and other elements of the CMS Final Rule, if appropriate.

Within 12 months of approval of the Transition Plan, the State will notify all HCBS-SED settings and providers of their compliance with the new Final Rule. All settings that are currently in compliance will be identified and shared publically with MCOs, stakeholders and consumers. HCBS-SED settings that need additional time to come into compliance will be notified of non-compliance areas. KDADS will work with stakeholders to develop timelines and benchmarks for HCBS Setting Final Rule compliance within the shortest timeframe possible.

- Settings that have regulatory or statutory limitations will be notified of the process, plan and timeline to complete changes to regulation and state law to comply with the new Final Rule. This process for coming into compliance with the HCBS Final Setting Rule may take up to two (2) years to complete. Compliance steps will be required for the parts of the Final Rule that are not affected by regulatory or statutory limitations. Individuals and providers will be notified of the process, plan and timeline for all settings to come into compliance.
- The State will update all provider manuals, consumer handbooks, and guides to incorporate the Final Rule requirements within 90 days of completion of the Assessment and Compliance Review activities. Ongoing updates will be made as settings become compliant with the new rule or regulation and statutes changed. Non-compliant settings will be monitored by the quality assurance and program integrity group during the 5 year transition plan timeframe. Failure to comply by the established deadlines could result in a final determination that the setting is non-compliant.

For settings that are not compliant with the new Final Rule, the State will ensure appropriate transitions by working with stakeholders and community partners. Additional stakeholder input will be required to develop a comprehensive plan for transition by January 2016. However, all HCBS participants will be afforded education and information about their rights and responsibilities prior to a transition from a non-compliant setting to a compliant setting. The State will establish a transition policy for relocation or transition to compliant settings after public input and comment that will address the process for transition, ensure choice is provided, and identify timeframes for appropriate transition.

Over the next five years, the Kansas Department for Aging and Disability Services (KDADS) will ensure that all residential and non-residential locations where a person receives home and

Community-based services (HCBS) through Medicaid allows individuals to be integrated in and have support for full access to services in the greater community, including opportunities to seek Employment and work in competitive integrated settings, to control personal resources, and to engage in community life in the same way as individuals not receiving Medicaid HCBS.

In HCBS settings for Serious Emotional Disturbance (SED) individuals, the individual will have:

- A lease or a written agreement with eviction and appeals rights
- Choice of settings and roommates based on their needs, preferences, and resources
- Choice of services and supports, and who provides
- Rights of privacy (lockable doors), dignity, respect, and freedom from coercion and restraint
- Right to control personal resources and make money in a job in the community
- Support for choice of daily activities, physical environment, and with whom to interact
- Freedom and support to control their own schedules, activities, and access food at any time
- Right and ability to have visitors of their choosing at any time
- A setting that is physically accessible, including ADA compliant
- Any limit or restriction supported by a specific assessed need, evaluated frequently, and be approved by the individual, parent or guardian

All provider controlled and owned residential and non-residential settings will be reviewed (regardless of license requirements), within 180 days of approval of the Transition Plan to identify settings that do not meet the rule and need additional time to address. The other non-residential settings will be evaluated for compliance utilizing the regulations and toolkit provided by CMS. Noncompliance will be addressed on a case-by-case basis.

During 2015, KDADS will assess all HCBS-SED Settings by June 30, 2015 to identify settings that comply with the HCBS Setting Rule and review state law and program policies that may need to be changed. KDADS will make changes to the Transition Plan in 2015 to set more specific timelines and benchmarks for compliance. By December 31, 2015, KDADS will identify all providers and individuals who may be affected by the changing rules and seek public input on timeframes and benchmarks. During 2016, KDADS will notify all HCBS-SED providers of non-compliance areas, timelines for compliance and benchmarks for achieving compliance in the shortest period possible. KDADS may change the Transition Plan to ensure compliance with the HCBS Setting Rules based on the State's Transition Plan for Access, Compliance and Public Engagement.

Questions and Comments

Questions and Answers are made available online and shared through appropriate public sessions, conference calls, listservs and bulletins during the comment period. A summary of responses are available on the website after the public comment period has ended. To request a hard copy of the proposed changes, the renewal or any other documents please contact Ryan.Gonzales@kdads.ks.gov

Comments and Public Input on this Transition Plan can be submitted to KDADS during the comment period the following ways:

- **In Person:** HCBS Setting Final Rule Public Comment Sessions in May and as scheduled

- **By Phone:** May 20 Provider and Consumer Lunch and Learn Calls, Provider Forums. Dial 1-866-620-7326 and Enter PIN 5272685242
- **By Email:** Ryan.Gonzales@kdads.ks.gov
- **By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256

Additional Questions can be submitted to KDADS at any time the following ways:

- **By Phone:** 785-296-4986 or during provider or consumer calls
- **By Email:** Ryan.Gonzales@kdads.ks.gov
- **By Mail:** KDADS, Attn: Ryan Gonzales, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256

KDADS will continue to be available for presentations and question and answer sessions to various state agencies, contracted entities, and community activities related to the HCBS Final Rule.